plained that, as a result of this decision, the sun would not set until 9:30 in this part of the state between April and October when it would be required to observe eastern daylight savings time. As a result, they claimed that patronage of their theaters, especially drive-ins, would be reduced.

The Uniform Time Act of 1966, 15 U.S.C. 260 *et seq.* (Supp. V), was enacted "to promote the adoption and observance of uniform time within the standard time zones prescribed by * * * this [Act]." Section 4(a) divides the country into eight zones and sets general boundaries. The eastern (second) zone must be between 75 and 90 degrees of longitude. Section 4(a) further provides:

> The limits of each zone shall be defined by an order of the * * * [Secretary of Transportation],[2] having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce * * *.

Unlike its predecessor, the 1966 Act requires the observance of advanced (daylight) time between April and October unless a state by law exempts the entire state. 15 U.S.C. 260a(a) (Supp. V).

The Secretary defined the boundary in question after informal rule-making proceedings under the

---

[2] The 1966 Act, like the prior 1918 Act, directed the Interstate Commerce Commission to carry out its policy. But before the Act became effective, the Commission's functions under the Act and earlier acts were transferred to the Secretary of the newly-created Department of Transportation (49 U.S.C. 1655(e)(5) (Supp. V)).

Administrative Procedure Act, 5 U.S.C. 553 (Supp. V). He published boundary proposals on two occasions and solicited comments from all interested persons in Indiana (Pet. App. 11a-17a). The Secretary also stated that, under the Act, he had no control over the observance or non-observance of daylight time (Pet. App. 4a). The order establishing the new boundary was issued in January, 1969 (Pet. App. 9a-19a). The Secretary noted that confusion regarding the mandatory observation of daylight time rendered certain comments ambiguous, but that aside from that issue, the boundary conformed to the majority preference, the historical pattern of time observance in the state,[3] and the "strong preference shown by the business community and the common carriers whose needs are specially to be considered in setting time zone boundaries pursuant to 15 U.S.C. 261" (Pet. App. 16a-17a).

A month before the new boundary was to become effective petitioners filed this action, seeking injunctive relief against its enforcement. The district court denied a preliminary injunction. Noting that theater

---

[3] Most of Indiana historically had observed eastern standard time during the entire year, with some fifteen counties in the northwest and southwest observing central standard time in the winter months and central daylight time in the summer months. In 1961, the Interstate Commerce Commission, acting under the prior legislation (15 U.S.C. 261 *et seq.*) defined the boundary between the eastern and central time zones so that it divided Indiana approximately in half. But since the prior legislation did not require observance of daylight time during the summer months, most of Indiana chose to ignore the 1961 zones and, in general, continued to observe time based on the historical pattern. (Pet. App. 9a-10a.)

owners who testified had stated "that they could live with Eastern time as long as it wasn't Eastern advanced time," the court pointed out that mandatory observance of advanced time resulted from the Act rather than the Secretary's decision (Opinion of District Court, p. 12).[3] The court took judicial notice that the Indiana Legislature had attempted to exempt the state from the advanced time provisions but that the Governor had vetoed the exemption act. The court concluded that petitioners' grievance was not with the Secretary, but with the Governor of Indiana and that their remedy was political, not judicial (Opinion of District Court, p. 13). The court also found that the Secretary's decision was made in accordance with the Act, after lawful proceedings under the Administrative Procedure Act, and that it was neither arbitrary and capricious nor an abuse of power (Pet. App. 8a). The court of appeals affirmed (Pet. App. 1a-6a).

2. Petitioners' arguments were correctly rejected below. The Secretary has authority under the Act to fix the limits of each time zone, so long as the resultant boundaries are within those legislatively prescribed. Petitioners admit (Pet. 5) that the boundary of "about 88°" was within the prescribed meridian for Central Standard Time of 90° longitude.[4] The

---

[3] The district court's opinion set forth at pp. 104-117 of petitioners' appendix before the court of appeals, which is on file with the Clerk.

[4] Petitioners' reference to prior Interstate Commerce Commission practice (Pet. 4) is unavailing, for it cannot alter the authorization granted to the Secretary by the 1966 Act. At

Act further requires the Secretary to consider "the convenience of commerce and the existing junction points and division points of common carriers in interstate or foreign commerce". It is undisputed that the Secretary acted in accordance with the preferences expressed by the majority of the Indiana businesses and common carriers responding to his solicitations.

Petitioners were not entitled to a hearing. The Act itself does not require one, but merely states that the Administrative Procedure Act is applicable to all proceedings conducted under it. 15 U.S.C. 266 (Supp. V). The Administrative Procedure Act, "standing alone does not require * * * a * * * hearing * * * as a part of rule making procedure." *California Citizens Band Association* v. *United States*, 375 F. 2d 43, 50 (C.A. 9), certiorari denied, 389 U.S. 844. Therefore, the Secretary properly followed the informal rule-making procedure of the Administrative Procedure Act, 5 U.S.C. 553 (Supp. V), "which essentially requires only publication of notice of the subject or issues involved, an opportunity for interested persons to participate through submission of written data, and the right of petition in respect of rules." *American Airlines, Inc.* v. *Civil Aeronautics Board*, 359 F. 2d 624, 629 (C.A.D.C.).

---

all events, the present boundary at about 88° longtitude is little different from the previous boundary of about 86° longitude set by the Commission in 1961.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1970.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 408143 295